HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Criminal Appeal No. 777-SB of 1996

Date of decision: 10th December, 2007.

Makhan Singh .... Appellant.

Versus

State of Haryana ... Respondent

...

CORAM: HON'BLE MR. JUSTICE HARBANS LAL

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Present: Mr. Ramesh Hooda, Advocate
for the appellant.

Mr. A. K.Rathee, AAG Haryana
for the respondent-State.

...

HARBANS LAL, J

This appeal has been directed against the judgment dated 17.9.1996/order of sentence dated 19.9.1996 rendered by the Court of learned Additional Sessions Judge, Hissar, whereby he convicted and sentenced the accused to undergo rigorous imprisonment for 10 (ten) years and to pay a fine of Rs.1,00,000/- or in default thereof, to further undergo rigorous imprisonment for two years.

The factual matrix of this case is that on 27.7.1994, SI/SHO

Raghbir Singh of Police Station, Ratia, accompanied by other Police officials was coming towards Ratia, after patrolling from the side of Village Mehmhra. when he reached on the bridge, he came across Manjit Singh as well as Gamdoor. When he was chattering with them, meanwhile one Fitter Rehra was spotted approaching from Bara side. On catching sight of the Police party, the driver-accused of the same accelerated the speed, which aroused suspicion in the mind of the above mentioned S.I., who made the same to stop. Three bags lying on the Rehra were suspected to contain some narcotic substance. The accused was offered to be searched before a Gazetted Officer or a Magistrate. He reposed confidence in the aforementioned Sub-Inspector. The consent memo., Ex.PA was jotted down, which was thumb marked by the accused and attested by Gamdoor Singh as well as Manjit Singh. On search, each bag was found containing Poppy straw (Chura Poast). 200 grams. of Poppy straw was drawn from each bag to serve as sample. The remaining bulk in each bag, when weighed, came to 38 kgs. 800 grams. The poppy straw drawn to serve as sample was converted into parcels which were sealed with seal 'RS'. Thereafter, the case property including the sample parcels were taken into possession. The seal after use was handed over to Manjit Singh, PW. Fitter Rehra was also seized. Ruqa was sent to the Police Station where on its basis formal FIR was recorded. On receipt of the report of Forensic Science Laboratory, Ex.PK, the charge sheet was laid in the Court for trial of the accused under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act").

The accused were charged under Section 15 of the Act to

which he did not plead guilty and claimed trial.

In order to substantiate its allegations, the prosecution has examined Manjit Singh, PW-1, Suraj Mal HC, PW-2, Bhagga Ram Constable, PW-3, Balwinder Singh HC, PW-4, Attar Singh Constable, PW-5, Raghbir Singh Inspector, PW-6 and closed its evidence.

On close of the prosecution evidence, when examined under Section 313, Criminal Procedure Code, the accused denied all the incriminating circumstances appearing in the prosecution evidence against them. He has put forth that I was brought from my house to the Police Station, where this case has been falsely planted upon him. He examined Jaswant Singh , DW-1 as well as Gamdoor Singh, DW-2 and closed his defence evidence.

After hearing the learned Public Prosecutor for the State, learned defence counsel and examining the evidence, the learned trial Court convicted and sentenced the accused, as noticed at the outset. Feeling aggrieved with the same, he preferred this appeal.

Mr. Ramesh Hooda, Advocate on behalf of the appellant, urged with great eloquence that the appellant was not made aware of his right to be searched before a Gazetted Officer or Magistrate and this lapse on his part speaks volumes of non-observance of the mandatory provisions of Section 15 of the Act. This lacuna deals a coup-de-grace to the prosecution edifice.

To controvert this submission, Mr. A.K.Rathee, on behalf of the State, pressed into service that Ex. PA, the consent memo tends to show that the accused was informed about his such right and he had offered to be searched before the Investigator and thus it does not lie in the mouth of Mr.

Hooda to contend that the provisions of Section 15 ibid have been given a go by. There is force in this submission.

A glance through Ex.PA would reveal that the appellant was offered to be searched before a Judge or a Gazetted Officer or before him. The word 'Nyayadheesh' has been used in the language of Ex.PA. It appears that the Investigator, finding no equivalent appropriate word conveying the meaning of Magistrate, made use of the word 'Nyayadheesh'. The administration of criminal justice should not turn on such technicalities. In the semantics of Section 15 ibid, the accused is to be apprised of his right that he has the option to be searched either before a Magistrate or a Gazetted Officer. A reasonable construction which can be put on Ex. PA is that he was given such offer by the Investigating Officer. This document purported to bear the thumb impression of the accused, signatures of Gamdoor Singh as well as Manjit Singh, independent witnesses. In his reply, Ex.PA/1 to the notice Ex.PA, he has submitted that he reposes confidence in him (Raghbir Singh, SI). This reply too bear his thumb impression as well as signatures of the above mentioned witnesses. Thus, the provisions of section 15 ibid have been vividly complied with.

Mr. Hooda further canvassed at the bar that as would be apparent from the evidence on record, Manjit Singh, independent witness did not lend support to the prosecution case and furthermore, Gamdoor Singh, DW has not been examined by the prosecution though when produced at the trial in defence, he falsified the prosecution story and in these premises, it would be going too far to rely upon the evidence of official witnesses, who are interested in the success of the case.

Mr. Rathee countered this argument by contending that Manjit Singh, PW might have been wooed by the accused and as its consequence he resiled from his statement. He further maintained that as regards Gamdoor singh, DW, he was given up on a specific pretext of his having been won over by the accused. He might have joined hands with the accused.

The contentions raised by Mr. Hooda can be hardly countenanced. The thrust of his argument is that Raghbir Singh, Inspector,PW6 as well as Suraj Mal HC, PW-2 being official witnesses, their evidence ought to be rejected outrightly. Manjit Singh PW has admitted his signatures on the notice, Ex.PA, reply Ex.PA/1 and the recovery memo, Ex.PB. In his cross-examination, he has alleged that his signatures were obtained on blank papers. He hails from Village Mehmhra to which the accused belongs. The accused might have approached this witness through respectables of the village to resile from his statement. This apart, being a co-villager, he would have hesitated to earn wrath of the accused. More often than not, the co-villagers hesitate from appearing as a witness against each other in akin matters. Nay this, he has not disclosed as to what forced him to append his signatures on blank papers. In the natural course of human conduct, in the fangled-times, a prudent man cannot be expected to give his signatures or thumb impression on a blank paper. Manjit Singh PW has no where stated that he was threatened by the Investigator that if he did not put his signatures on blank papers, he will face serious consequences. So, it would be quite reasonable and legitimate to infer that, as a matter of fact, the accused was apprehended with Poppy

Straw on Fitter Rehra in his presence and he had to sign Ex.PA as well as Ex.PA/1. Doubtless that Gamdoor Singh, cited as a prosecution witness, has been given up. His appearance as a defence witness in favour of the accused has affirmed the apprehension of the prosecution. This witness has testified that the Police asked them to sign some papers and assured them that Manjit Singh will be released by the evening. In his cross-examination, he has admitted his signatures on Ex.PB at point 'A'. He has disowned his statement Ex.PL under Section 161 of Cr.P.C. He also belongs to the village of the accused. So, it was not difficult for the accused to prevail upon him. The accused, in all probability, might have infiltrated influence upon him. Manjit Singh, PW as well as Gamdoor Singh, DW were at liberty to refuse to append their signatures on blank papers apprehending that the same can be used by the Investigator for any purpose. So, neither the statement of Manjit Singh nor Gamdoor Singh inspire confidence. In re: **Aher Raja Khima** v. **State of Saurashtra**, AIR 1956 SC 217, it has been observed as under :-

> " The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him, without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration. "

A close examination of the solemn affirmations made by PW-2, HC Suraj Mal as well as PW-6 Inspector Raghbir Singh, would reveal

that they could not be impeached in any manner when their statements were tested with their cross-examination. So, in view of the afore-quoted presumption, these case be relied upon without any demure.

In re: **Masalti** v. **State of U.P.**, AIR 1965 SC 202, it has been held as under :-

> "It is undoubtedly, the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case but it would be unsound to lay down it as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorized. "

The same view was reiterated in case **Bawa Hazi** v. **State of Kerala,** AIR 1974 SC 902. In view of these observations, the prosecution was well within its right to give up Gamdoor Singh, DW for his having been gained over by the accused.

No other material point has been urged or agitated before me.

In view of the preceding discussion, I do not find any infirmity or illegality in the impugned judgment. Sequelly, this appeal being devoid of any merit, is dismissed.

(HARBANS LAL)
JUDGE

10th December, 2007

RS